Panca Delima Sdn Bhd v Pentadbir Tanah Daerah Sepang and other appeals

HIGH COURT (SHAH ALAM) — LAND REFERENCE NOS RT MT3 15–102 OF 2000, RT MT3 15–103 OF 2000 AND RT MT3 15–105 OF 2000
LOW HOP BING J
7 OCTOBER 2002

Land Law *— Acquisition of land — Compensation — Assessment of compensation — Appeal — Factor in deciding the potential value of land — Land Acquisition Act 1960 First Schedule para 4*

This is an appeal by the respective registered owners of the land in the Mukim of Dengkil ('the appellants') against the decision of the Land Administrator, Sepang ('the respondent') in relation to the amount of compensation. The appellants were asking for not less than RM21m or RM14 per sq ft pursuant to the sale and purchase agreement dated 19 September 1996 which was tendered at the inquiry together with supporting payment vouchers. The respondent submitted that the respondent's valuation report had not been disputed by the appellants who were therefore deemed to have accepted it. Further, the repsondent relied on para 4(a) of the First Schedule to the Land Acquisition Act 1960 ('the Act') which provides that the compensation awarded shall not be any amount in excess of the amount stated or claimed.

Held:

(1) Paragraph 4 in the First Schedule to the Act sets out a limitation on the award which must not be in excess of the amount stated or claimed at any inquiry before the land administrator under s 12 of the Act or in any statement in writing required by the land administrator under s 11(2) of the Act. The appellants were asking for an award of not less than RM21m or RM14 per sq ft, in which case the limitation on the award should be one which is not in excess of RM14 per sq ft. The actual amount to be awarded by the court in these appeals shall be determined after a careful consideration of the assessors' reports (see p 616B–D).

(2) Having regard to the principles relating to market value and more specifically to the respective opinion of the assessors, the court was of the view that the opinion of assessor Tan Keng Heng is more reflective of the market value of the aforesaid acquired land. Pursuant to s 40D of the Act, the court concurred with the opinion of assessor Tan Keng Heng being the fair and reasonable compensation (see p 618D–E).

[Bahasa Malaysia summary

Ini adalah satu rayuan oleh pemilik-pemilik berdaftar tanah masing-masing di Mukim Dengkil ('perayu-perayu tersebut') terhadap

keputusan Pentadbir Tanah, Sepang ('responden') berhubung jumlah pampasan. Perayu-perayu memohon tidak kurang daripada RM21j atau RM14 kaki persegi menurut perjanjian jual beli bertarikh 19 September 1996 yang telah diserahkan semasa siasatan bersama sokongan baucer-baucer pembelian. Responden berhujah bahawa laporan penilaian responden tidak dipertikaikan oleh perayu-perayu yang oleh demikian dianggap sebagai telah menerimanya. Tambahan pula, responden bergantung kepada perenggan 4(a) Jadual Pertama kepada Akta Perolehan Tanah 1960 ('Akta tersebut') yang memperuntukkan bahawa pampasan yang diawardkan tidak boleh dalam apa jumlahpun melebihi jumlah yang dinyatakan atau dituntut.

Diputuskan:

(1) Perenggan 4 dalam Jadual Pertama Akta tersebut memperkatakan tentang satu batasan berhubung award yang tidak boleh melebihi jumlah yang dinyatakan atau dituntut dalam mana-mana siasatan di hadapan pentadbir tanah di bawah s 12 Akta tersebut atau dalam apa-apa pernyataan bertulis yang dikehendaki oleh pentadbir tanah di bawah s 11(2) Akta tersebut. Perayu-perayu memohon untuk satu award tidak kurang daripada RM21j atau RM14 kaki persegi, di dalam mana batasan untuk award tersebut sepatutnya tidak melebihi RM14 kaki persegi. Jumlah sebenar yang patut diawardkan oleh mahkamah dalam rayuan-rayuan tersebut hendaklah ditentukan setelah satu pertimbangan yang teliti dilakukan ke atas laporan-laporan penilai-penilai (lihat ms 616B–D).

(2) Setelah mengambilkira prinsip-prinsip berhubung nilai pasaran dan lebih khusus lagi kepada pendapat setiap penilai, mahkamah berpandangan bahawa pendapat penilai Tan Keng Heng lebih menggambarkan nilai pasaran tanah yang diperolehi. Menurut s 40D Akta tersebut, mahkamah bersetuju dengan pendapat penilai Tan Keng Heng sebagai pampasan yang adil dan munasabah (lihat ms 618D–E).]

Notes

For cases on compensation for land, see 8 *Mallal's Digest*, (4th Ed, 2001 Reissue) paras 1580–1581.

Cases referred to

Guan Seng Co Ltd, Taiping v Pentadbir Tanah Daerah Larut dan Matang, Taiping [1994] 1 MLJ 4 (refd)

Kailas Chandra v Secretary of State 17 Cal LJ 35 (refd)

Nanyang Manufacturing Co v The Collector of Land Revenue, Johore [1954] MLJ 69 (refd)

Ng Tiou Hong v Collector of Land Revenue, Gombak [1984] 2 MLJ 35 (refd)

Setia Usaha Tetap Kementerian Pelajaran v Collector of Land Revenue, Butterworth [1972] 2 MLJ 155 (refd)
Superintendent of Lands and Surveys, Sarawak v Aik Hoe & Co Ltd [1966] 1 MLJ 243 (refd)
Vyricherla Narayana Gajapatiraju v The Revenue Divisional Officer, Vizagapatam [1939] AC 302 (refd)

Legislation referred to

Land Acquisition Act 1960 ss 4, 8 11(2), 12,40A(2), (3), 40C, 40D, 51(1)(b), First Schedule, paras 1(1), 4(a),

Hazman Ahmad (*Hazman & Assoc*) for the appellants.
Dato' Hj Mohd Zawawi Hj Salleh (Legal Adviser) for the respondents.

Low Hop Bing J:

Appeal

This is an appeal by the respective registered owners of the land in the Mukim of Dengkil ('the appellants') against the decision of the Land Administrator, Sepang ('the respondent') in relation to the amount of compensation. The relevant particulars of the land and the amount of compensation awarded by the respondent may be tabulated as follows:

Lot No	Appellant	Area	Respondent's Award (RM)
PT5733 and PT5734	Panca Delima Sdn Bhd	34.40ac and 25.40ac	[For two lots] 18,625,197 [±7.15 per sq ft]
PT6109	Wenang Sejati Sdn Bhd	49.999ac	4,653,820 [= 2.14 per sq ft]
PT6415	Esawatan Sdn Bhd	32ac	2,987,500 [= 2.14 per sq ft]

The respective gazetted dates of acquisition of the aforesaid land were the same, ie 5 December 1996 under s 4 of the Land Acquisition Act 1960 ('the Act') and 13 March 1997 under s 8 of the Act. By consent of the parties herein, all the aforesaid three appeals were heard together.

Submission for appellants

Encik Hazman Ahmad, learned counsel for the appellants, submitted that the aforesaid land had been acquired for the purpose of developing the Cyber Park Phase 1, Cyberjaya which forms part of the Putrajaya Structural Plan within the Multimedia Super Corridor. The lots are held under 99 years' lease and having 91 years to run. They are situated in the development belts of Bangi, Putrajaya and Puchong. He relied on the

valuation report filed for the appellants in which the lots in question are valued at RM16 per sq ft, but added that the appellants would be quite contented with an award of RM14 per sq ft.

He stressed that the notes of proceedings relating to the inquiry before the respondent show that the appellants were asking for not less than RM21m or RM14 per sq ft pursuant to the sale and purchase agreement dated 19 September 1996 which was tendered at the inquiry together with supporting payment vouchers. That being the case, he submitted that the provisions of para 4 governing limitation on award in the First Schedule to the Act would not apply to these appeals. He added that the respondent has accepted and acknowledged the existence and validity of the said sale and purchase agreement. He therefore prays for the appeals to be allowed, with an award of RM14 per sq ft.

In the further submission for the appellants, in respect of Lots 5733 and 5734 owned by Panca Delima Sdn Bhd, it was contended that a sale and purchase agreement for the shares in the said company has been transacted between various parties thereto and that the purchase consideration of the shares in the said company amounted to an equivalent purchase consideration of RM14 per sq ft and that the sale and purchase agreement for the shares in the said company has been duly valued and stamped by the Collector of Stamp Duties. It was stressed that the respondent's aforesaid award was inappropriate as the Federal Constitution provides for fair compensation to the registered owners.

Respondent's contention

By way of a preliminary issue, it was contended by Dato Hj Mohd Zawawi bin Salleh, learned Legal Adviser, Selangor, for the respondent that the respondent's valuation report dated 29 April 1997 has not been disputed by the appellants who are therefore deemed to have accepted it.

Secondly, reliance was placed on para 4(a) of the First Schedule to the Act which provides that where at any inquiry made by the land administrator under s 12 of the Act or in any statement in writing required by the land administrator under s 11(2) of the Act, any person interested has made a valuation or claimed compensation for any land or any interest therein, such person shall not at any time be awarded any amount in excess of the amount stated or claimed. In any event, according to the learned legal adviser, if the court is inclined to increase the award, such increase should not exceed RM21m to be based on the market value of the aforesaid land, which leads to the choice of the valuation reports in question.

It was submitted for the respondent that in the valuation report prepared for the appellants, the four comparisons used by the appellants' valuer did not reflect the relevant factors such as the market value, the size, the low lying and swampy state of the aforesaid land and the access thereto.

It was the respondent's contention that since these acquisitions were gazetted on 5 December 1996 under s 4 of the Act, prior to the amendment to the Act, there should be no order for surveyor's fees.

In the circumstances, the respondent urged the court to dismiss the appeals herein.

Decision of the court

Para 4, First Schedule to the Land Acquisition Act 1960

In my view, para 4 in the First Schedule to the Act as alluded to above sets out a limitation on the award which must not be in excess of the amount stated or claimed at any inquiry before the land administrator under s 12 of the Act or in any statement in writing required by the land administrator under s 11(2) of the Act. Having carefully perused the notes of proceedings relating to the inquiry before the respondent and also the respective submissions herein, it is clear to me that the appellants were asking for an award of not less than RM21m or RM14 per sq ft, in which case I am of the view that the limitation on the award should be one which is not in excess of RM14 per sq ft. The actual amount to be awarded by the court in these appeals shall be determined after a careful consideration of the assessors' reports respectively.

Assessors' reports

As the objections raised in these appeals before the court are in regard to the amount of compensation, for the purpose of assisting the court in the hearing of the objections in these appeals and in arriving at a fair and reasonable amount of compensation, this court has pursuant to s 40A(2) and (3) of the Act duly appointed two assessors, viz Pn Zaleha bte Baharum who is a valuation officer employed by the Government, and Mr Tan Keng Heng who is a valuation surveyor whose registration No is V316/E500. Both the assessors have duly prepared their respective reports in writing and have been duly recorded in accordance with s 40C of the Act.

Assessor Zaleha bte Baharum is of the view that the fair and reasonable compensation for the aforesaid land is RM300,000 per hectar which is equivalent to RM2.788 per sq ft.

Assessor Tan Keng Heng gave his valuation of the market value of the aforesaid land as follows:

Lot No	Area	Compensation
PT 5733	34.4ac	RM12,040,000 ie RM350,000 per ac
PT 5734	25.40ac	RM8,890,000 ie RM350,000 per ac
PT6415	32ac	RM9,600,000 ie RM300,000 per ac

PT6109	50ac	RM15,000,000 ie RM300,000 per ac

It is to be noted that the assessors have each arrived at a decision which differs from each other. In the circumstances, pursuant to s 40D of the Act, the judge, having regard to the opinion of each assessor, shall elect to concur with the decision of one of the assessors and the amount of compensation to be awarded shall be the amount decided upon by that assessor.

In her written report, assessor Zaleha bte Baharum is of the opinion that the respondent's valuation by way of comparison may be accepted as the dates of the respective transfers are just before the date of valuation, in connection with agricultural lots whose areas are respectively smaller than the aforesaid acquired land, and that the transfers were completed at a consideration between RM370,680 and RM588,175 per hectar, for land located between 1.2km and 5km from the town of Dengkil. She added that the size, tenure, condition and location of the various lots of land used for comparison must be taken into account.

On the other hand, assessor Tan Keng Heng holds the view that the market value of the aforesaid acquired land as assessed by him above is arrived at after perusing all the relevant reports and documents. He gave a summary of description and a comparison of awards. He stressed that the comparable Lot 3022 is the most suitable, subject to suitable adjustment for differences in land size and other relevant factors. Lot 3022 is a freehold agricultural lot in the Mukim of Dengkil which is in the vicinity and in the same mukim as the said acquired land, regular in shape, 4.8749 acres in area and was transacted on 9 October 1996 (which is two months before the gazetted date under s 4 of the Act, ie 5 December 1996) for a consideration of RM2,437,500 which is equivalent to RM11.48 per sq ft. As the aforesaid acquired land is 99-year leasehold land, having a balance of 91 years to run, he concluded that the fair and reasonable compensation based on market value is as tabulated and stated above.

The issue before the court revolves around the determination of the market value which is to form the basis of the fair and reasonable compensation for the aforesaid acquired land. The expression 'market value' has been judicially considered in a number of cases which do throw some light as to what it actually means (see *Setia Usaha Tetap Kementerian Pelajaran v Collector of Land Revenue, Butterworth* [1972] 2 MLJ 155, at p 1557F–I; *Nanyang Manufacturing Co v The Collector of Land Revenue, Johore* [1954] MLJ 69). Market value is 'the price that an owner willing, and not obliged to sell might reasonably expect to obtain from a willing purchaser with whom he was bargaining for the sale and purchase of the land', per Jenkins CJ in *Kailas Chandra v Secretary of State* 17 Cal LJ 35 as quoted by Buhagiar J in *Nanyang Manufacturing Co v The Collector of Land Revenue, Johore* at p 71. A similar sentiment was expressed by Abdul Malik Ishak JC (as he them was) in *Guan Seng Co Ltd, Taiping v Pentadbir Tanah Daerah Larut dan Matang, Taiping* [1994] 1 MLJ 4, at p 8H–I. It is also 'the prices that have been obtained in the past for land of similar quality and in

similar positions', per Lord Romer in *Vyricherla Narayana Gajapatiraju v The Revenue Divisional Officer, Vizagapatam* [1939] AC 302 (PC), which was followed by our Federal Court in *Superintendent of Lands and Surveys, Sarawak v Aik Hoe & Co Ltd* [1966] 1 MLJ 243, and also in *Ng Tiou Hong v Collector of Land Revenue, Gombak* [1984] 2 MLJ 35.

The First Schedule to the Act further sets out the principles relating to the determination of the compensation, in particular para 1(1) which provides for the meaning of the term 'market value' as follows:

> Market value
>
> 1(1) For the purposes of this Act the term 'market value' where applied to any scheduled land shall mean the market value of such land —
>
> (a) at the date of publication in the *Gazette* of the notification under s 4, provided that such notification shall within twelve months from the date thereof be followed by a declaration under s 8 in respect of all or some part of the land in the locality specified; or
>
> (b) in other cases, at the date of the publication in the *Gazette* of the declaration made under s 8.

Having regard to the above principles relating to market value and more specifically to the respective opinion of the aforesaid assessors, I am of the view that the opinion of assessor Tan Keng Heng is more reflective of the market value of the aforesaid acquired land. Pursuant to s 40D of the Act, I hereby elect to concur with the opinion of assessor Tan Keng Heng being the fair and reasonable compensation as tabulated above, which I hereby accept and make an award in terms thereof. In addition, pursuant to s 51(1)(b) of the Act, I award costs to be paid by the land administrator to the applicants to be taxed by the registrar of this court.

Order accordingly.

Reported by Peter Ling